



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/049,121	03/27/98	CLARK	R 2119-107P

002292
BIRCH STEWART KOLASCH & BIRCH
P O BOX 747
FALLS CHURCH VA 22040-0747

MM12/0215

EXAMINER

PHAN, J

ART UNIT	PAPER NUMBER
----------	--------------

2872

DATE MAILED:

02/15/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)	
	09/049,121	CLARK ET AL.	
	Examiner	Art Unit	
	Phan, J.	2872	

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

1) Responsive to communication(s) filed on 02 December 1999.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) 6-8, 11 and 16-20 is/are withdrawn from consideration.

5) Claim(s) 2 is/are allowed.

6) Claim(s) 1, 3 and 12 is/are rejected.

7) Claim(s) 4, 5, 9, 10 and 13-15 is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are objected to by the Examiner.

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some * c) None of the CERTIFIED copies of the priority documents have been:

1. received.

2. received in Application No. (Series Code / Serial Number) _____.

3. received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

14) Notice of References Cited (PTO-892)

15) Notice of Draftsperson's Patent Drawing Review (PTO-948)

16) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____

17) Interview Summary (PTO-413) Paper No(s) _____

18) Notice of Informal Patent Application (PTO-152)

19) Other: _____

Art Unit: ~~2872~~

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of species (4) of Fig. 5 in Paper No. 12 is acknowledged. The traversal is on the ground(s) that there would be no serious burden on the examiner in examining all claims together. This is not found persuasive because each of the patentably distinct species requires a separate search and thus, a serious burden on the examiner has been shown.

The requirement is still deemed proper and is therefore made FINAL.

Claims 6-8, 11 and 16-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species/invention. Note that claims 6-8, 11 and 16-18 do not read on Fig. 5 and that claims 19-20 are directed to the nonelected invention (see the response to restriction requirement filed 3/3/99).

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The rejection claim 1 under 35 U.S.C. 102(e) as being anticipated by La Fiandra made in paper no. 7 is repeated.

Applicant has traversed the above rejection by arguing that the applied reference does not disclose a vertical comb drive as required by claim 1. This argument has been

Art Unit: ~~1872~~

found unpersuasive since the broad claim 1 is satisfied by the reference (see the vertical comb drive in Fig. 1).

The rejection claims 1, 3 and 12 under 35 U.S.C. 102(e) as being anticipated by Kiang et al made in paper no. 7 is repeated.

Applicant has traversed the above rejection by arguing that the applied reference does not disclose a deformable mirror nor a vertical comb drive as required by claims 1, 3 and 12. This argument has been found unpersuasive since the broad claims are satisfied by the reference (see the vertical comb drive in Fig. 2). Note that the preamble of the claims has not been given any patentable weight.

Allowable Subject Matter

Claim 2 is allowed.

Claims 4-5, 9-10, and 13 -15 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

Art Unit: ~~2872~~

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Phan whose telephone number is (703) 308-4810. The examiner can normally be reached on Monday through Friday from 9:30 to 6:00 PM.

The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7722.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

Phan, J.
February 14, 2000


James Phan
Primary Examiner